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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/595,820

05/12/2006

Henning Von Spreckelsen

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7195

25928 7590 05/26/2010
CHRISTOPHER J. KULISH, P.C.
1531 Norwood Avenue
Boulder, CO 80304

EXAMINER

MCKINLEY, CHRISTOPHER BRIAN

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

05/26/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/595,820	Applicant(s) VON SPRECKELSEN ET AL.	
	Examiner CHRISTOPHER B. MCKINLEY	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-8 and 14-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8 and 14-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/7/2010</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 5-8 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawajiri et al. (4,948,015) in view of White (4,640,424). Kawajiri et al. disclose the limitations of the claims including a fitment (figs. 1-29) comprising a base flange (20), spout (13a), removable part (15), overcap (13b), barrier foil (21, 22) coated with aluminum (col. 4, lines 47-59), first and second plastic layers (portion of plastic layer 21 on opposite sides of aluminum foil 22), receiving wall (fig. 4, downwardly extending of portion of base flange 20 housing barrier foil 21, 22), wherein said foil is sealed to the base flange (fig. 4), tamper evident means (17, 18), barrier coated (col. 3, lines 52-63) paperboard carton (fig. 28) with pre-cut hole (11), wherein said fitment is inserted into said hole and injection molding (col. 6, line 61). Kawajiri et al. excludes what White teaches, a terminal side surface (fig. 7, 38) having first and second plastic layers disposed on opposite sides of a barrier layer (col. 6, lines 18-44) disposed there between thereby providing a suitable seal **and** utilizing welding (col. 6, line 60) in order to effectively connect two members, one to another. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to modify Kawajiri et al. with a terminal side surface, as taught by White, in order to simplify the production

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process by simply mating the barrier layers together thereby reducing production cost while maintaining a suitable barrier layer **and** having the barrier foil being welded to the base flange in order to provide an enhanced, secure engagement between the base flange and the barrier foil.

3. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as described in par. 2 in view of Iwasaki et al. (6,682,686). The references as described in par. 2 disclose the limitations of the claims substantially excluding what Iwasaki et al. teach, a U-shaped portion (fig. 2b, 5b), having first and second legs (downwardly extending, spaced portions of U-shaped portion 5b) separated by a transverse portion (portion of U-shaped portion 5b separating first and second legs) in order to receive an adjacent member. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the references as described in par. 2 with a U-shaped portion on said base flange in order to receive and seal the terminal side surface of the barrier foil.

Response to Arguments

4. Applicant's arguments with have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

6. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

7. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER B. MCKINLEY whose telephone number is (571)272-3370. The examiner can normally be reached on Monday-Thursday, 7:00 AM - 5:30 PM.

9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. B. M./
Examiner, Art Unit 3781

/Nathan J. Newhouse/
Supervisory Patent Examiner, Art Unit 3782